KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

NEW YORK, NY
TYSONS CORNER, VA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
JAKARTA, INDONESIA
MUMBAI, INDIA

FACSIMILE
(202) 342-8451
www.kelleydrye.com

DIRECT LINE: (202) 342-8518

EMAIL: tcohen@kelleydrye.com

September 9, 2011

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: American Cable Association ("ACA") Notice of Ex Parte Presentation; *In the Matter of Connect America Fund,* WC Docket No. 10-90 et al.

Dear Ms. Dortch:

On September 7, 2011, Matt Polka and Ross Lieberman, ACA, and the undersigned, Thomas Cohen of Kelley Drye & Warren LLP, met with Zac Katz, Chief Counsel and Senior Legal Advisor to Chairman Genachowski, and Sharon Gillett, Carol Mattey, Rebekah Goodheart, and Patrick Halley, Wireline Competition Bureau, in regard to the above-mentioned dockets. The purpose of the meeting was to discuss the Commission's proposed reform of the High-Cost fund and intercarrier compensation regimes, the creation of the Connect America Fund ("CAF"), the plans submitted by incumbent local exchange carriers ("LECs") (America's Broadband Connectivity Plan ("ABC")[1] and the RLEC Plan[2]), and the comments and reply comments just filed by ACA on those plans.[3]

ACA agrees with the Commission's objectives to achieve universal broadband deployment efficiently and effectively and drive the deployment of modern networks. It also supports the Commission's aim to adopt a final order this fall.

1 *See* Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 10-90 et al. (filed July 29, 2011).

2 *See* Comments of NECA, NTCA, OPATSCO, and WTA, WC Docket No. 10-90 et al. (filed May 2, 2011).

3 *See* Comments of American Cable Association, WC Docket No. 10-90 et al. (filed Aug. 24, 2011); Reply Comments of American Cable Association, WC Docket No. 10-90 et al. (filed Sept. 6, 2011).

But, the Commission's broadband objectives need to be achieved consistent with the current, more vibrant competitive telecommunications landscape. As the incumbent LECs note in using the "competition" rationale to drive their intercarrier compensation reform:

- Incumbent wireline LECs have lost 40% of their access lines in the past decade.
- In that same time, cable operators and other competitors have captured 30% of the wireline voice market.
- In addition, approximately 30% of wireline subscribers have "cut-the-cord."
- Perhaps most importantly for the Commission's broadband agenda, cable operators have the predominant share of the broadband market and their service constantly ranks at the top in terms of broadband performance.[4]

ACA submits that the advent of competition gives the Commission greater ability to most efficiently achieve its universal broadband objective.

ACA's insistence that any Commission action must be competitively neutral is reinforced by both the current market structure and forward-looking plans of its members, many of whom operate in rural markets. ACA just surveyed them and found that those members that do not receive any support compete extensively with incumbent Price Cap LECs.[5] Further, ACA members who are cable operators and do not receive High-Cost support today believe they can deploy broadband efficiently to unserved areas with support.

In addition to ensuring any new universal service and intercarrier compensation regimes are competitively neutral, the Commission should ensure they are fiscally responsible. The assessment on interstate telecommunications users to fund universal service has grown tremendously over the past decade, and, at approximately 15%, the current rate is clearly onerous. From its survey, ACA found that 70% of its members consider the universal service assessment to be burdensome for their customers and themselves.

Based on these objectives, the ABC Plan has serious flaws. As detailed in ACA's comments and reply comments, the plan is not competitively neutral. It also is not fiscally responsible. Because ACA seeks to work with the Commission so that it can adopt an order shortly, ACA proposes the following fixes:

---

4 *See, e.g.*, Eric Griffith, "The Fastest ISPs in the U.S. 2011," PC Magazine (Aug. 31, 2011), *available at* http://www.pcmag.com/article2/0,2817,2392095,00.asp.

5 Using LEC reports, UBS reported that as of the 3rd Quarter 2010 there is between a 75-100% overlap between Price Cap LEC serving areas and areas where major cable operators offer broadband service. Since this report did not include most ACA member companies, it should be viewed as a conservative indicator of the presence of competition.

- Eliminate current High-Cost funding for Price Cap LECs in two years (as proposed by the Commission), which will have the added benefit of freeing up more funding for the CAF.

- Do not adopt an Access Replacement Mechanism ("ARM") for Price Cap LECs. The ARM is just universal service support by another name, and thus, if deemed necessary to meet universal service objectives, should be included in the CAF. By not adopting the ARM, additional CAF funding will be available.

- For CAF distribution to be competitively neutral, it should adhere to the following policies:

  1. No support should be provided in areas (census blocks) where an unsupported competitor offers broadband service (at 4 Mbps/768 kbps) to more than 75% of the premises as of the time support is awarded;
  2. Supported areas should be determined without regard to the technology or network architecture used by any particular provider;
  3. Support should be awarded through a competitive process (*e.g.*, reverse auctions) and not by giving the Price Cap incumbents a Right of First Refusal; and
  4. The competitive process should use objective, forward looking criteria, including higher performance speeds than proposed in the ABC Plan, which increase over time.

- Impose a permanent, hard cap (year end 2010 levels) on all High-Cost/CAF and any related funding.

ACA raised two final points in the meeting. First, it believes that smaller, incumbent (rate-of-return) LECs should be given a longer transition period from current High-Cost support, which will have the added benefit of easing the administration of any transition by the Commission. As such, ACA generally supports the RLEC proposals, although it is concerned that the plan does not impose a hard and permanent cap on funding.

Second, ACA noted that the proponents of the ABC Plan and RLEC Plan have told the Commission repeatedly that any "tinkering" with their proposals would cause their Plans to implode. But, as ACA noted at the outset of this filing, the industry structure has evolved enormously in the past decade and since these same players submitted their CALLS and MAG plans. In contrast to that time, the incumbent LECs now represent only one sector of the overall industry. For the Commission to fashion new regimes that truly reflect the public interest, it will need to include in any order beneficial public policies supported by a wide swath of private interests, as well as consumers.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,

Thomas Cohen
Kelley Drye & Warren, LLP
3050 K Street N.W.
Washington, DC 20007
202-342-8518
tcohen@kelleydrye.com
Counsel for the American Cable Association

cc: Z. Katz
S. Gillett
C. Matter
R. Goodheart
P. Halley